

# Showing Current Law as Amended by H.R. \_\_\_\_, Restoring Accountability in the Indian Health Service Act of 2023 (Discussion Draft)

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

## Title I of the Indian Health Care Improvement Act (25 U.S.C. 1611 et seq.)

\*\*\*

### **SEC. 125. INCENTIVES FOR RECRUITMENT AND RETENTION.**

(a) PARITY IN HIS HEALTH CARE WORKFORCE PERSONNEL AND PAY SYSTEM.—The Secretary shall establish a personnel and pay system for physicians, dentists, nurses, and other health care professional employed by the Service that provides a personnel and pay system that, to the maximum extent practicable, is comparable to the pay provided to physicians, dentists, nurses, and other health care professionals, respectively, under subchapters III and IV of chapter 74 of title 38, United States Code.

(b) HOUSING VOUCHERS.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 1 year after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, the Secretary may establish a program to provide tenant-based rental assistance to an employee of the Service who—

(A) agrees to serve for not less than 1 year at a Service unit designated by the Administrator of the Health Resources and Services Administration as a health professional shortage area (as defined in section 332(a) of the Public Health Service Act (42 U.S.C. 254e(a))) with the greatest staffing need; and

(B) is a critical employee, as determined by the Secretary.

(2) SUNSET.—Any program established by the Secretary under paragraph (1) shall terminate on the date that is 3 years after the date on which the program is established.

(3) Reports.—Not later than 1 year after the date on which a program established under paragraph (1) is terminated in accordance with paragraph (2), the Secretary shall submit to Congress a report describing, with respect to that program—

(A) the costs of the program;

(B) employee uptake of the program; and

(C) the effects of the program on local facility staffing needs.

(c) ADMINISTRATION.—The Secretary may only provide a benefit under subsection (b) to—

(1) a full-time employee who agrees to serve for not less than 1 year in the Service beginning on the date of the agreement; or

(2) a part-time employee who agrees to serve for not less than 2 years in the service beginning on the date of the agreement.

### **SEC. 126. MEDICAL CREDENTIALING SYSTEM.**

(a) IN GENERAL.—

(1) DEVELOPMENT AND IMPLEMENTATION TIMELINE.—Not later than 1 year after the date of enactment of the Restoring Accountability in the Indian Health Service Act of

2023, the Secretary, acting through the Service (referred to in this section as the “Secretary”), in accordance with subsection (b), shall develop and implement a Service-wide centralized credentialing system (referred to in this section as the “credentialing system”) to credential licensed health professional who seek to provide health care services at any Service unit.

(2) IMPLEMENTATION.—In implementing the credentialing system, the Secretary—

(A) shall not require re-credentialing of licensed health professionals who were credentialed using existing Service policy prior to the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023; and

(B) shall—

(i) use the credentialing system for—

(I) all applications for credentialing or re-credentialing of licensed health professionals submitted on or after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023; and

(II) the migration into the credentialing system of credentials data that existed prior to implementation of the credentialing system; and

(ii) maintain the established timeline for re-credentialing of licensed health professionals who were credentialed prior to the implementation of the credentialing system, as defined by Service policy.

(b) REQUIREMENTS.—

(1) IN GENERAL.—In developing the credentialing system under subsection (a), the Secretary shall ensure that—

(A) credentialing procedures shall be uniform throughout the Service; and

(B) with respect to each licensed health professional who successfully completes the credentialing procedures of the credentialing system, the Secretary may authorize the licensed health professional to provide health care services at any Service unit.

(2) EXEMPTION.—The requirements described in paragraph (1) shall not apply to licensed health professionals who were credentialed using existing Service policy prior to the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023 until the date on which those licensed health professionals are required to be re-credentialled in accordance with the credentialing system developed and implemented under subsection (a).

(c) CONSULTATION.—In developing the credentialing system under subsection (a), the Secretary—

(1) shall consult with Indian tribes; and

(2) may consult with—

(A) any public or private association of medical providers;

(B) any government agency; or

(C) any other relevant expert, as determined by the Secretary.

(d) APPLICATION.—

(1) IN GENERAL.—Subject to paragraph (2), a licensed health care professional may not provide health care services at any Service unit, unless the licensed health care professional successfully completes the credentialing procedures of the credentialing system developed and implemented under subsection (a).

(2) EXEMPTION.—Paragraph (1) shall not apply to licensed health professionals who were credentialed using existing Service policy prior to the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023 until the date on which those licensed health professionals are required to be re-credentialed in accordance with the credentialing system developed and implemented under subsection (a).

(e) NONDUPLICATION OF EFFORTS.—

(1) IN GENERAL.—To the extent that prior to the deadline described in subsection (a)(1), the Service has begun implementing or has completed implementation of a medical credentialing system that otherwise meets the requirements of this section, the Service shall not be required to establish a new credentialing system under this section.

(2) AUTHORITY.—The Service may expand or enhance an existing credentialing system to meet the requirements of this section.

(3) REVIEW.—

(A) IN GENERAL.—Not less frequently than once every 5 years, the Service shall—

(i) undertake a formal review of the credentialing system in effect on the date of the review; and

(ii) if necessary, take action to bring the credentialing system into compliance with the requirements of this section.

(B) CONSULTATION.—Each formal review conducted under subparagraph

(A) shall be subject to the consultation requirements under subsection (c).

(f) EFFECT.—Nothing in this section—

(1) negatively impacts the right of an Indian tribe to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.); or

(2) applies to such a compact or contract unless expressly agreed to by the Indian tribe.

## **Section 224 of the Public Health Service Act (42 U.S.C. 233)**

### **§233. Civil actions or proceedings against commissioned officers or employees**

#### **(a) Exclusiveness of remedy**

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be

exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

**(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary**

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

**(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal**

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

**(d) Compromise or settlement of claim by Attorney General**

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in [section 2677 of title 28](#) and with the same effect.

**(e) Assault or battery**

For purposes of this section, the provisions of [section 2680\(h\) of title 28](#) shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

**(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees**

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude

the remedies of third persons against the United States described in [section 2679\(b\) of title 28](#), for such damage or injury.

**(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; coverage for services furnished to individuals other than center patients; application process; subrogation of medical malpractice claims; applicable period; entity and contractor defined**

(1)(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided-

- (i) to all patients of the entity, and
- (ii) subject to subparagraph (C), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals-

- (i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;
- (ii) facilitates the provision of services to patients of the entity; or
- (iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h).

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i), the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

(i) The Secretary may not consider the entity in making estimates under subsection (k)(1).

(ii) This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under [section 254b, 254b, or 256a of this title](#).<sup>1</sup>

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

(i) The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.

(ii) Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.

(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application (and thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section).

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under [section 254b of this title](#).

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if-

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

#### **(h) Qualifications for designation as Public Health Service employee**



The Secretary may not approve an application under subsection (g)(1)(D) unless the Secretary determines that the entity-

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k).

**(i) Authority of Attorney General to exclude health care professionals from coverage**

(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual-

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

**(j) Remedy for denial of hospital admitting privileges to certain health care providers**

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4), [section 254h\(e\) of this title](#) shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

**(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts**

(1)(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and [chapter 171 of title 28](#) from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

(B) The estimate under subparagraph (A) shall take into account-

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection (g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and [chapter 171 of title 28](#), and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g), but not to exceed a total of \$10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of [sections 254b, 254b and 256a of this title](#).<sup>1</sup>

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers, governing board members, employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

#### **(I) Timely response to filing of action or proceeding**

(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a), the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the



appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) and issues an order consistent with such determination.

**(m) Application of coverage to managed care plans**

(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) shall, for purposes of this section, be deemed to be an employee of the Public Health Service with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(3) For purposes of this subsection, the term "managed care plan" shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4)) for the delivery of such services to plan enrollees.

**(n) Report on risk exposure of covered entities**

(1) Not later than one year after December 26, 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

(A) The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.

(B) The risk exposure of such entities.

(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of receiving a grant under [section 254b, 254b, or 256a of this title](#).<sup>1</sup>

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account-

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of-

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this chapter were reduced pursuant to subsection (k)(2).

(B) A comparison of-

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after December 26, 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by the Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

**(o) Volunteer services provided by health professionals at free clinics**

(1) For purposes of this section, a free clinic health professional shall in providing a qualifying health service to an individual, or an officer, governing board member, employee, or contractor of a free clinic shall in providing services for the free clinic, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (6)(D). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a free clinic health professional if the following conditions are met:

(A) The service is provided to the individual at a free clinic, or through offsite programs or events carried out by the free clinic.

(B) The free clinic is sponsoring the health care practitioner pursuant to paragraph (5)(C).

(C) The service is a qualifying health service (as defined in paragraph (4)).

(D) Neither the health care practitioner nor the free clinic receives any compensation for the service from the individual or from any third-party payor (including reimbursement under

any insurance policy or health plan, or under any Federal or State health benefits program). With respect to compliance with such condition:

(i) The health care practitioner may receive repayment from the free clinic for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(ii) The free clinic may accept voluntary donations for the provision of the service by the health care practitioner to the individual.

(E) Before the service is provided, the health care practitioner or the free clinic provides written notice to the individual of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection (or in the case of an emergency, the written notice is provided to the individual as soon after the emergency as is practicable). If the individual is a minor or is otherwise legally incompetent, the condition under this subparagraph is that the written notice be provided to a legal guardian or other person with legal responsibility for the care of the individual.

(F) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable law regarding the provision of the service.

(3)(A) For purposes of this subsection, the term "free clinic" means a health care facility operated by a nonprofit private entity meeting the following requirements:

(i) The entity does not, in providing health services through the facility, accept reimbursement from any third-party payor (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program).

(ii) The entity, in providing health services through the facility, either does not impose charges on the individuals to whom the services are provided, or imposes a charge according to the ability of the individual involved to pay the charge.

(iii) The entity is licensed or certified in accordance with applicable law regarding the provision of health services.

(B) With respect to compliance with the conditions under subparagraph (A), the entity involved may accept voluntary donations for the provision of services.

(4) For purposes of this subsection, the term "qualifying health service" means any medical assistance required or authorized to be provided in the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], without regard to whether the medical assistance is included in the plan submitted under such program by the State in which the health care practitioner involved provides the medical assistance. References in the preceding sentence to such program shall as applicable be considered to be references to any successor to such program.

(5) Subsection (g) (other than paragraphs (3) through (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (6) and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) This subsection may not be construed as deeming any free clinic to be an employee of the Public Health Service for purposes of this section.

(C) With respect to a free clinic, a health care practitioner is not a free clinic health professional unless the free clinic sponsors the health care practitioner. For purposes of this subsection, the free clinic shall be considered to be sponsoring the health care practitioner if-

(i) with respect to the health care practitioner, the free clinic submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a free clinic health professional, this subsection applies to the health care practitioner (with respect to the free clinic sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(E) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(6)(A) For purposes of making payments for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of free clinic health professionals, there is authorized to be appropriated \$10,000,000 for each fiscal year.

(B) The Secretary shall establish a fund for purposes of this subsection. Each fiscal year amounts appropriated under subparagraph (A) shall be deposited in such fund.

(C) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of free clinic health professionals, will be paid pursuant to this section during the calendar year that begins in the following fiscal year. Subsection (k)(1)(B) applies to the estimate under the preceding sentence regarding free clinic health professionals to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(D) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subparagraph (B) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (C) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(7)(A) This subsection takes effect on the date of the enactment of the first appropriations Act that makes an appropriation under paragraph (6)(A), except as provided in subparagraph (B)(i).

(B)(i) Effective on August 21, 1996-

(I) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (5)(C); and

(II) reports under paragraph (6)(C) may be submitted to the Congress.

(ii) For the first fiscal year for which an appropriation is made under subparagraph (A) of paragraph (6), if an estimate under subparagraph (C) of such paragraph has not been made for the calendar year beginning in such fiscal year, the transfer under subparagraph (D) of such

paragraph shall be made notwithstanding the lack of the estimate, and the transfer shall be made in an amount equal to the amount of such appropriation.

**(p) Administration of smallpox countermeasures by health professionals**

**(1) In general**

For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

**(2) Declaration by Secretary concerning countermeasure against smallpox**

**(A) Authority to issue declaration**

**(i) In general**

The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

**(ii) Covered countermeasure**

The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (7)(A)) for purposes of administration to individuals during the effective period of the declaration.

**(iii) Effective period**

The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

**(iv) Publication**

The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

**(B) Liability of United States only for administrations within scope of declaration**

Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if-

(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

(ii)(I) the individual was within a category of individuals covered by the declaration; or

(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

**(C) Presumption of administration within scope of declaration in case of accidental vaccinia inoculation**

**(i) In general**

If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual-

(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

**(ii) Circumstances in which presumption applies**

The presumption and deeming stated in clause (i) shall apply if-

(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

(II) the individual has resided with, or has had contact with, an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

**(D) Acts and omissions deemed to be within scope of employment**

**(i) In general**

In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual's office or employment for purposes of-

(I) subsection (a); and

(II) section 1346(b) and [chapter 171 of title 28](#).

**(ii) Individuals to whom deeming applies**

An individual is described by this clause if-

(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).

**(3) Exhaustion; exclusivity; offset**

**(A) Exhaustion**

**(i) In general**

A person may not bring a claim under this subsection unless such person has exhausted such remedies as are available under part C of this subchapter, except that if the Secretary fails to make a final determination on a request for benefits or compensation filed in accordance with the requirements of such part within 240 days after such request was filed, the individual may seek any remedy that may be available under this section.

**(ii) Tolling of statute of limitations**

The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a request for benefits or compensation under part C of this subchapter.

**(iii) Construction**

This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under [chapter 171 of title 28](#), to exhaust administrative remedies.

**(B) Exclusivity**



The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this subchapter.

**(C) Offset**

The value of all compensation and benefits provided under part C of this subchapter for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.

**(4) Certification of action by Attorney General**

Subsection (c) applies to actions under this subsection, subject to the following provisions:

**(A) Nature of certification**

The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

**(B) Certification of Attorney General conclusive**

The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

**(5) Covered person to cooperate with United States**

**(A) In general**

A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

**(B) Consequences of failure to cooperate**

Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate-

(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

(ii) the United States shall not be liable based on the acts or omissions of such person; and

(iii) the Attorney General shall not be obligated to defend such action.

**(6) Recourse against covered person in case of gross misconduct or contract violation**

**(A) In general**

Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

**(B) Venue**

The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

## **(7) Definitions**

As used in this subsection, terms have the following meanings:

### **(A) Covered countermeasure**

The term "covered countermeasure" or "covered countermeasure against smallpox", means a substance that is-

- (i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or
- (II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and
- (ii) specified in a declaration under paragraph (2).

### **(B) Covered person**

The term "covered person", when used with respect to the administration of a covered countermeasure, means a person who is-

- (i) a manufacturer or distributor of such countermeasure;
- (ii) a health care entity under whose auspices-
  - (I) such countermeasure was administered;
  - (II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;
  - (III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or
  - (IV) an evaluation was made of whether the administration of a countermeasure was effective;
- (iii) a qualified person who administered such countermeasure;
- (iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;
- (v) in the case of a claim arising out of alleged transmission of vaccinia from an individual-
  - (I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or
  - (II) an entity that employs an individual described by clause (I) <sup>2</sup> or where such individual has privileges or is otherwise authorized to provide health care;
- (vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);
- (vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or
- (viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).

**(C) Qualified person**

The term "qualified person", when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who-

- (i) is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered; or
- (ii) is otherwise authorized by the Secretary to administer such countermeasure.

**(D) Arising out of administration of a covered countermeasure**

The term "arising out of administration of a covered countermeasure", when used with respect to a claim or liability, includes a claim or liability arising out of-

- (i) determining whether, or under what conditions, an individual should receive a covered countermeasure;
- (ii) obtaining informed consent of an individual to the administration of a covered countermeasure;
- (iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or
- (iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).

**(q) Health professional volunteers at public or non-profit private entities**

(1) For purposes of this section, a health professional volunteer at a deemed entity described in subsection (g)(4) shall, in providing a health professional service eligible for funding under [section 254b of this title](#) to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(C). The preceding sentence is subject to the provisions of this subsection.

(2) In providing a health service to an individual, a health care practitioner shall for purposes of this subsection be considered to be a health professional volunteer at an entity described in subsection (g)(4) if the following conditions are met:

(A) The service is provided to the individual at the facilities of an entity described in subsection (g)(4), or through offsite programs or events carried out by the entity.

(B) The entity is sponsoring the health care practitioner pursuant to paragraph (3)(B).

(C) The health care practitioner does not receive any compensation for the service from the individual, the entity described in subsection (g)(4), or any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the entity described in subsection (g)(4) for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual, which may include travel expenses to or from the site of services.

(D) Before the service is provided, the health care practitioner or the entity described in subsection (g)(4) posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited pursuant to this subsection.

(E) At the time the service is provided, the health care practitioner is licensed or certified in accordance with applicable Federal and State laws regarding the provision of the service.

(F) At the time the service is provided, the entity described in subsection (g)(4) maintains relevant documentation certifying that the health care practitioner meets the requirements of this subsection.

(3) Subsection (g) (other than paragraphs (3) and (5)) and subsections (h), (i), and (l) apply to a health care practitioner for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4), and subject to the following:

(A) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(B) With respect to an entity described in subsection (g)(4), a health care practitioner is not a health professional volunteer at such entity unless the entity sponsors the health care practitioner. For purposes of this subsection, the entity shall be considered to be sponsoring the health care practitioner if-

(i) with respect to the health care practitioner, the entity submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(C) In the case of a health care practitioner who is determined by the Secretary pursuant to subsection (g)(1)(E) to be a health professional volunteer at such entity, this subsection applies to the health care practitioner (with respect to services performed on behalf of the entity sponsoring the health care practitioner pursuant to subparagraph (B)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes such determination.

(D) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions specified in paragraph (2) is met.

(4)(A) Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

(B)(i) Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to the Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year.

(ii) Subsection (k)(1)(B) applies to the estimate under clause (i) regarding health professional volunteers to the same extent and in the same manner as such subsection applies to the estimate under such subsection regarding officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(iii) The report shall include a summary of the data relied upon for the estimate in clause (i), including the number of claims filed and paid from the previous calendar year.

(C) Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in such fiscal year, subject to the extent of amounts in the fund.

(5)(A) This subsection shall take effect on October 1, 2017, except as provided in subparagraph (B).

(B) Effective on December 13, 2016-

(i) the Secretary may issue regulations for carrying out this subsection, and the Secretary may accept and consider applications submitted pursuant to paragraph (3)(B); and

(ii) reports under paragraph (4)(B) may be submitted to Congress.

(f) CERTAIN INDIAN HEALTH SERVICE VOLUNTEERS DEEMED PUBLIC HEALTH SERVICE EMPLOYEES.—

(1) IN GENERAL.—For purposes of this section, a health professional volunteer at a Service unit shall, in providing a health service to an individual, be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under paragraph (4)(C). The preceding sentence is subject to the provisions of this subsection.

(2) CONDITIONS.—In providing a health service to an individual, a health care practitioner shall, for purposes of this subsection, be considered to be a health professional volunteer at a Service unit if all of the following conditions are met:

(A) The service is provided to the individual at the facilities of a Service unit, or through offsite programs or events carried out by the Service unit.

(B) The Service unit is sponsoring the health care practitioner pursuant to paragraph (3)(C).

(C) The health care practitioner does not receive any compensation for the service from the individual, the Service unit, or any third-party payer (including reimbursement under any insurance policy or health plan, or under any Federal or State health benefits program), except that the health care practitioner may receive repayment from the Service unit for reasonable expenses incurred by the health care practitioner in the provision of the service to the individual.

(D) Before the service is provided, the health care practitioner or the Service unit posts a clear and conspicuous notice at the site where the service is provided of the extent to which the legal liability of the health care practitioner is limited under this subsection.

(E) At the time the service is provided, the health care practitioner is licensed, certified, credentialed, and privileged in accordance with Service policy and applicable law regarding the provision of the service.

(3) APPLICABILITY.—Subsection (g) (other than paragraphs (3) and (5)) and subsections (h), (i), and (l) apply to a health care practitioner at a Service unit for purposes of this subsection to the same extent and in the same manner as such subsections apply to an officer, governing board member, employee, or contractor of an entity described in subsection (g)(4), subject to paragraph (4) and subject to the following subparagraphs:

(A) Each reference to an entity in subsections (g), (h), (i), and (l) shall be considered to be a reference to a Service unit.

(B) The first sentence of paragraph (1) applies in lieu of the first sentence of subsection (g)(1)(A).

(C) With respect to a Service unit, a health care practitioner is not a health professional volunteer at the Service unit unless the Service unit sponsors the health care practitioner. For purposes of this subsection, the Service unit shall be considered to be sponsoring the health care practitioner if—

(i) with respect to the health care practitioner, the Service unit submits to the Secretary an application meeting the requirements of subsection (g)(1)(D); and

(ii) the Secretary, pursuant to subsection (g)(1)(E), determines that the health care practitioner is deemed to be an employee of the Public Health Service.

(D) In the case of a health care practitioner who is determined by the Secretary pursuant to this subsection and subsection (g)(1)(E) to be a health professional volunteer, this subsection applies to the health care practitioner (with respect to services performed on behalf of the Service unit sponsoring the health care practitioner pursuant to subparagraph (C)) for any cause of action arising from an act or omission of the health care practitioner occurring on or after the date on which the Secretary makes that determination.

(E) Subsection (g)(1)(F) applies to a health care practitioner for purposes of this subsection only to the extent that, in providing health services to an individual, each of the conditions described in paragraph (2) is met.

#### (4) FUNDING.—

(A) IN GENERAL.—Amounts in the fund established under subsection (k)(2) shall be available for transfer under subparagraph (C) for purposes of carrying out this subsection.

##### (B) ANNUAL ESTIMATES.—

(i) IN GENERAL.—Not later than May 1 of each fiscal year, the Attorney General, in consultation with the Secretary, shall submit to Congress a report providing an estimate of the amount of claims (together with related fees and expenses of witnesses) that, by reason of the acts or omissions of health professional volunteers, will be paid pursuant to this section during the calendar year that begins in the following fiscal year.

(ii) APPLICABILITY.—Subsection (k)(1)(B) applies to the estimate under clause (i) relating to health professional volunteers to the same extent and in the same manner as that subsection applies to the estimate under that subsection relating to officers, governing board members, employees, and contractors of entities described in subsection (g)(4).

(C) TRANSFERS.—Not later than December 31 of each fiscal year, the Secretary shall transfer from the fund under subsection (k)(2) to the appropriate accounts in the Treasury an amount equal to the estimate made under subparagraph (B) for the calendar year beginning in that fiscal year, subject to the extent of amounts in the fund.

#### (5) DEFINITION OF SERVICE UNIT.—

(A) IN GENERAL.—In this subsection, the term “Service unit” has the meaning given the term in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

(B) INCLUSION.—In this subsection, the term “Service unit” includes an urban Indian organization with which the Indian Health Service has entered into a contract with, or to which the Indian Health Service has made a grant, under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.).

#### (6) EFFECT.—Nothing in this subsection—

(A) negatively impacts the right of an Indian tribe to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.); or

(B) applies to such a compact or contract unless expressly agreed to by the Indian tribe.

#### (7) EFFECTIVE DATES.—



(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall take effect on October 1, 2024.

(B) REGULATIONS, APPLICATIONS, AND REPORTS.—Effective on the date of the enactment of the Restoring Accountability in the Indian Health Service Act of 2023, the Secretary may—

(i) prescribe regulations for carrying out this subsection; and

(ii) accept and consider applications submitted under paragraph (3)(C)(i).

## **Section 108 of the Indian Health Care Improvement Act (25 U.S.C. 1616a)**

### **§1616a. Indian Health Service Loan Repayment Program**

#### **(a) Establishment**

(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

(2) For the purposes of this section-

(A) the term "Indian health program" means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered-

(i) directly by the Service;

(ii) by any Indian tribe or tribal or Indian organization pursuant to a contract under-

(I) the Indian Self-Determination Act [25 U.S.C. 5321 et seq.], or

(II) section 23 of the Act of April 30, 1908 <sup>1</sup> (25 U.S.C. 47), popularly known as the "Buy-Indian" Act; or

(iii) by an urban Indian organization pursuant to subchapter IV of this chapter; and

(B) the term "State" has the same meaning given such term in section 254d(i)(4) <sup>1</sup> of title 42.

#### **(b) Eligibility**

To be eligible to participate in the Loan Repayment Program, an individual must-

(1)(A) be enrolled-

(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) in an approved graduate training program in a health profession; or

[(B) have-

(i) a degree in a health profession; and

(ii) a license to practice a health profession in a State;]

(B) have—

(i)(I) a degree in a health profession; and

(II) a license to practice a health profession in a State; or  
(ii)(I) a master's degree in business administration with an emphasis in health care management (as defined by the Secretary), health administration, hospital administration, or public health; and

(II) a license or certification to practice in the field of business administration, health administration, hospital administration, or public health in a State, if the Secretary determines the license or certification is necessary for the Indian health program to which the individual will be assigned;

(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps <sup>2</sup> of the Public Health Service;

(B) be eligible for selection for civilian service in the Regular or Reserve Corps <sup>2</sup> of the Public Health Service;

(C) meet the professional standards for civil service employment in the Indian Health Service; or

(D) be employed in an Indian health program without a service obligation; and

(3) submit to the Secretary an application for a contract described in subsection (f).

#### **(c) Application and contract forms**

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (I) in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps <sup>2</sup> of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

(2) The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

#### **(d) Vacancies; priority**

(1) Consistent with paragraph (3), the Secretary, acting through the Service and in accordance with subsection (k), shall annually-

(A) identify the positions in each Indian health program for which there is a need or a vacancy, and

(B) rank those positions in order of priority.

(2) Consistent with the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall give priority to applications made by-

(A) Indians; and

(B) individuals recruited through the efforts of Indian tribes or tribal or Indian organizations.

(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that-

- (i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and
- (ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.

**(e) Approval**

(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).

(2) The Secretary shall provide written notice to an individual promptly on-

(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

(B) the Secretary's disapproving an individual's participation in such Program.

**(f) Contract terms**

The written contract referred to in this section between the Secretary and an individual shall contain-

(1) an agreement under which-

(A) subject to paragraph (3), the Secretary agrees-

(i) to pay loans on behalf of the individual in accordance with the provisions of this section, and

(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe or Indian organization as provided in subparagraph (B)(iii), and

(B) subject to paragraph (3), the individual agrees-

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)-

(I) to maintain enrollment in a course of study or training described in subsection

(b)(1)(A) until the individual completes the course of study or training, and

(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

[(iii) to serve for a time period (hereinafter in this section referred to as the "period of obligated service") equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession in an Indian health program to which the individual may be assigned by the Secretary;]

(iii) to serve for a time period (referred to in this section as the “period of obligated service”) equal to—

(I) 2 years or such longer period as the individual may agree to serve in the full-time practice of the individual's profession in an Indian health program to which the individual may be assigned by the Secretary; or

(II) 4 years or such longer period as the individual may agree to serve in the half-time practice of the individual's profession in an Indian health program to which the individual may be assigned by the Secretary;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

(4) a statement of the damages to which the United States is entitled under subsection (I) for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

**(g) Loan repayment purposes; maximum amount; tax liability reimbursement; schedule of payments**

(1) A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for-

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

(C) reasonable living expenses as determined by the Secretary.

[(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to \$35,000 (or an amount equal to the amount specified in section 254I-1(g)(2)(A) of title 42) on behalf of the individual for loans described in paragraph (1).] (2) AUTHORIZED PAYMENTS.—

(A) AMOUNT OF PAYMENT.—

(i) FULL-TIME PRACTICE.—In the case of an individual who contracts to serve a period of obligated service under subsection (f)(1)(B)(iii)(I), for each year of the obligated service, the Secretary may pay up to \$35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act (42 U.S.C. 254I-1(g)(2)(A))) on behalf of the individual for loans described in paragraph (1).

(ii) HALF-TIME.—In the case of an individual who contracts to serve a period of obligated service under subsection (f)(1)(B)(iii)(II), for each year of such obligated service, the Secretary may pay up to \$17,500 on behalf of the individual for loans described in paragraph (1).

[In making a determination] (B) DETERMINATION OF AMOUNT OF PAYMENT.—In making a determination under this paragraph of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination-

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

**[(B) Any arrangement] (C) DEADLINE FOR REPAYMENTS.—Any arrangement** made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary-

(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

#### **(h) Effect on employment ceiling of Department of Health and Human Services**

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department of Health and Human Services.

#### **(i) Recruiting programs**

The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

#### **(j) Prohibition of assignment to other government departments**

Section 215 of title 42 shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

#### **(k) Staff needs of health programs administered by Indian tribes**

The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall-

(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

**(I) Voluntary termination of study or dismissal from educational institution; collection of damages**

(1) An individual who has entered into a written contract with the Secretary under this section and who-

(A) is enrolled in the final year of a course of study and who-

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which-

(A) "A" is the amount the United States is entitled to recover;

(B) "Z" is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) "t" is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

(D) "s" is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to [section 1395ccc of title 42](#).

(3)(A) Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach or such longer period beginning on such date as shall be specified by the Secretary.

(B) If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages-

(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.



(C) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. [Section 3718 of title 31](#) shall apply to any such contract to the extent not inconsistent with this subsection.

**(m) Cancellation or waiver of obligations; bankruptcy discharge**

(1) Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

**(n) Annual report**

The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under [section 1671 of this title](#), a report concerning the previous fiscal year which sets forth-

(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

(4) the amount of loan payments made under this section, in total and by health profession;

(5) the number of scholarship grants that are provided under [section 1613a of this title](#) with respect to each health profession;

(6) the amount of scholarship grants provided under [section 1613a of this title](#), in total and by health profession;

(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.

**Title VI of the Indian Health Care Improvement Act (25 U.S.C. 1661 et seq.)**

\*\*\*

## **SEC. 605. IMPROVEMENTS IN HIRING PRACTICES.**

(a) **DIRECT HIRE AUTHORITY.**—The Secretary may appoint, without regard to subchapter I of chapter 33 of title 5, United States Code (other than sections 3303 and 3328 of that title), a candidate directly to a position within the Service for which the candidate meets the qualifications standard established by the Office of Personnel Management.

(b) **TRIBAL NOTIFICATION.**—

(1) **IN GENERAL.**—Before appointing, hiring, promoting, transferring, or reassigning a candidate to a Senior Executive Service position or the position of a manager at an Area office or Service unit, the Secretary shall provide notice to each Indian tribe located within the defined geographic area of the Area office or Service unit, as applicable, of the content of an inclusion in an employment record.

(2) **COMMENT PERIOD.**—Each Indian tribe that receives notification under paragraph (1) may submit to the Secretary comments during the 10-day period after the date of notification.

## **SEC. 606. IMPROVED AUTHORITIES OF SECRETARY TO IMPROVE ACCOUNTABILITY OF SENIOR EXECUTIVES OF THE INDIAN HEALTH SERVICE.**

(a) **DEFINITIONS.**—In this section:

(1) **COVERED INDIVIDUAL.**—The term “covered individual” means a career appointee (as defined in section 3132(a) of title 5, United States Code)

(2) **MISCONDUCT.**—The term “misconduct” includes—

(A) neglect of duty;

(B) malfeasance;

(C) failure to accept a directed reassignment; and

(D) failure to accompany a position in a transfer of function.

(3) **SECRETARY.**—The term “Secretary” means the Secretary, acting through the Service.

(4) **SENIOR EXECUTIVE POSITION.**—The term “senior executive position” means a Senior Executive Service position (as defined in section 3132(a) of title 5, United States Code).

(b) **AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary may, in accordance with this section, reprimand, suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Service if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

(2) **REMOVAL FROM CIVIL SERVICE.**—If the Secretary removes a covered individual pursuant to paragraph (1), the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5, United States Code).

(c) **RIGHTS AND PROCEDURES.**—

(1) **IN GENERAL.**—A covered individual who is the subject of an action or removal, as applicable, under subsection (b) is entitled—

(A) to advance notice of the action or removal;

(B) to access a file containing all evidence in support of the proposed action or removal;

(C) to be represented by an attorney or other representative of the covered individual's choice; and

(D) to grieve the decision on the action or removal under paragraph (2) in accordance with the internal grievance process established by the Secretary under paragraph (3).

(2) NOTICE; RESPONSE; DECISION.—

(A) IN GENERAL.—The aggregate period for notice, response, and decision on an action or removal under subsection (b) may not exceed 15 business days.

(B) RESPONSE.—A covered individual receiving a notice under paragraph (1)(A) of an action or removal, as applicable, under subsection (b) shall have not more than 7 business days to respond to the notice.

(C) DECISION.—

(i) IN GENERAL.—The Secretary shall issue a decision on an action or removal, as applicable, under subsection (b) not later than 15 business days after the date on which notice of the action or removal, as applicable, is received by the applicable covered individual under paragraph (1)(A).

(ii) REQUIREMENTS.—A decision under clause (i)—

(I) shall be in writing; and

(II) shall include the specific reasons for the decision.

(D) FINAL AND CONCLUSIVE DECISION.—A decision under this paragraph that is not grieved under paragraph (3) by the deadline described in that paragraph shall be final and conclusive.

(3) GRIEVANCE PROCESS.—

(A) IN GENERAL.—The Secretary shall establish an internal grievance process under which a covered individual may grieve a decision issued under paragraph (2) not later than the date that is 7 business days after the date on which the decision under that paragraph was issued.

(B) TOTAL PERIOD.—The Secretary shall issue a decision for which an internal grievance process is initiated under subparagraph (A) not later than 21 business days after the date on which the grievance process is initiated by the covered individual.

(C) FINAL AND CONCLUSIVE DECISION.—A grievance decision under this paragraph shall be final and conclusive.

(4) JUDICIAL REVIEW.—A covered individual adversely affected by a decision under paragraph (2) that is not grieved, or by a grievance decision under paragraph (3), may obtain judicial review of the decision.

(5) COURT REVIEW.—In any case in which judicial review is sought under paragraph (4), the court shall review the record and may set aside any action of the Department or the Service found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

(B) obtained without procedures required by a provision of law having been followed; or

(C) unsupported by substantial evidence.

(d) RELATION TO OTHER PROVISIONS OF LAW.—Section 3592(b)(1) of title 5, United States Code, shall not apply to an action under subsection (b).

## **SEC. 607. IMPROVED AUTHORITIES OF SECRETARY TO IMPROVE ACCOUNTABILITY OF EMPLOYEES OF THE INDIAN HEALTH SERVICE.**

(a) DEFINITIONS.—In this section:

(1) COVERED INDIVIDUAL.—

(A) IN GENERAL.—The term “covered individual” means an individual occupying a position at the Service.

(B) EXCLUSIONS.—The term “covered individual” does not include—

(i) an individual occupying a senior executive position (as defined in section 606(a));

(ii) an individual who has not completed a probationary or trial period; or

(iii) a political appointee.

(2) GRADE.—The term “grade” has the meaning given the term in section 7511(a) of title 5, United States Code.

(3) MISCONDUCT.—The term “misconduct” includes—

(A) neglect of duty;

(B) malfeasance;

(C) failure to accept a directed reassignment; and

(D) failure to accompany a position in a transfer of function.

(4) POLITICAL APPOINTEE.—The term “political appointee” means an individual who is—

(A) employed in a position described in any of section 5312 through 5316 of title 5, United States Code (relating to the Executive Schedule);

(B) a limited term appointee, limited emergency appointee, or noncareer appointee (as those terms are defined in section 3132(a) of title 5, United States Code); or

(C) employed in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations (or a successor regulation).

(5) SECRETARY.—The term “Secretary” means the Secretary, acting through the Service.

(6) SUSPEND.—The term “suspend” means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay for a period in excess of 14 days.

(b) AUTHORITY.—

(1) IN GENERAL.—The Secretary may, in accordance with this section, remove, demote, or suspend a covered individual from employment at the Service if the Secretary

determines that the performance or misconduct of the covered individual warrants such action.

(2) ACTIONS.—If the Secretary removes, demotes, or suspends a covered individual pursuant to paragraph (1), the Secretary may—

(A) remove the covered individual from the civil service (as defined in section 2101 of title 5, United States Code);

(B) demote the covered individual by means of—

(i) a reduction in grade for which the covered individual is qualified, as the Secretary determines appropriate; and

(ii) a reduction of the annual rate of pay of the covered individual;

or

(C) suspend the covered individual from the civil service (as defined in section 2101 of title 5, United States Code).

(c) PAY OF CERTAIN DEMOTED INDIVIDUALS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any covered individual subject to a demotion by means of a reduction in grade under subsection (b)(2)(B) shall, beginning on the date of the demotion, receive the annual rate of pay applicable to the reduced grade.

(2) RESTRICTIONS.—

(A) PROHIBITION ON ADMINISTRATIVE LEAVE.—A covered individual subject to a demotion under subsection (b)(2)(B)—

(i) may not be placed on administrative leave during the period during which an appeal (if any) under this section is ongoing; and

(ii) may only receive pay if the covered individual reports for duty or is approved to use accrued unused annual, sick, family medical, military, or court leave.

(B) Restriction on pay and benefits.—If a covered individual subject to a demotion under subsection (b)(2)(B) does not report for duty (and has not received approval to use accrued unused leave under subparagraph (A)(ii)), the covered individual shall not receive pay or other benefits pursuant to subsection (e)(7).

(d) RIGHTS AND PROCEDURES.—

(1) IN GENERAL.—A covered individual who is the subject of an action or removal, as applicable, under subsection (b) is entitled—

(A) to advance notice of the action or removal;

(B) to access a file containing all evidence in support of the proposed action or removal;

(C) to be represented by an attorney or other representative of the covered individual's choice; and

(D) to grieve the decision on the action or removal under paragraph (2) in accordance with the internal grievance process established by the Secretary under paragraph (3).

(2) NOTICE; RESPONSE; DECISION.—

(A) AGGREGATE PERIOD.—The aggregate period for notice, response, and a final decision on an action under subsection (b) may not exceed 15 business days.

(B) RESPONSE.—A covered individual receiving a notice under paragraph (1)(A) of an action or removal under subsection (b) shall have not more than 7 business days to respond to the notice.

(C) FINAL AND CONCLUSIVE DECISION.—

(i) IN GENERAL.—The Secretary shall issue a final and conclusive decision on an action or removal under subsection (b) not later than 15 business days after the date on which the notice of the action is received by the applicable covered individual under paragraph (1)(A).

(ii) REQUIREMENTS.—A decision under clause (i)—

(I) shall be in writing; and

(II) shall include the specific reason for the decision.

(3) GRIEVANCE PROCESS.—

(A) IN GENERAL.—The Secretary shall establish an internal grievance process under which a covered individual may grieve a decision issued under paragraph (2) not later than the date that is 7 business days after the date on which the decision under that paragraph was issued.

(B) TOTAL PERIOD.—The Secretary shall issue a decision for which an internal grievance process is initiated under subparagraph (A) not later than 21 business days after the date on which the grievance process is initiated by the covered individual.

(C) FINAL AND CONCLUSIVE DECISION.—A grievance decision under this paragraph shall be final and conclusive.

(4) PROCEDURES SUPERSEDING CBAS.—The procedures under this subsection shall supersede an collective bargaining agreement to the extent that such an agreement is inconsistent with the procedures.

(5) PERFORMANCE APPRAISAL.—The procedures under chapter 43 of title 5, United States Code, shall not apply to an action under subsection (b).

(6) APPEAL TO MERIT SYSTEMS PROTECTION BOARD.—

(A) IN GENERAL.—Subject to subparagraph (B) and subsection (e), any removal, demotion, or suspension of more than 14 days under subsection (b) may be appealed to the Merit Systems Protection Board, which shall refer such appeal to an administrative law judge pursuant to section 7701(b)(1) of title 5, United States Code.

(B) TIME PERIOD.—An appeal under subparagraph (A) of a removal, demotion, or suspension may only be made if the appeal is made not later than 10 business days after the date of the removal, demotion, or suspension.

(e) EXPEDITED REVIEW.—

(1) IN GENERAL.—On receipt of an appeal under subsection (d)(6)(A), the applicable administrative law judge shall—

(A) expedite the appeal under section 7701(b)(1) of title 5, United States Code; and



(B) issue a final and complete decision on the appeal not later than 180 days after the date of the appeal.

(2) UPHOLDING DECISION.—

(A) IN GENERAL.—Notwithstanding section 7701(c)(1)(B) of title 5, United States Code, the administrative law judge shall uphold the decision of the Secretary to remove, demote, or suspend an employee under subsection (b) if the decision is supported by substantial evidence.

(B) PROHIBITION OF MITIGATION.—Notwithstanding title 5, United States Code, or any other provision of law, if the decision of the Secretary to remove, demote, or suspend an employee under subsection (b) is supported by substantial evidence, the administrative law judge shall not mitigate the penalty prescribed by the Secretary.

(3) APPEAL TO MERIT SYSTEMS PROTECTION BOARD.—

(A) IN GENERAL.—The decision of the administrative law judge under paragraph (1) may be appealed to the Merit Systems Protection Board.

(B) UPHOLDING DECISION.—Notwithstanding section 7701(c)(1)(B) of title 5, United States Code, the Merit Systems Protection Board shall uphold the decision of the Secretary to remove, demote, or suspend an employee under subsection (b) if the decision is supported by substantial evidence.

(C) PROHIBITION OF MITIGATION.—Notwithstanding title 5, United States Code, or any other provision of law, if the decision of the Secretary is supported by substantial evidence, the Merit Systems Protection Board shall not mitigate the penalty prescribed by the Secretary.

(4) REPORT.—In any case in which an administrative law judge cannot issue a final and complete decision by the deadline described in paragraph (1)(B), the Merit Systems Protection Board shall, not later than 14 business days after the deadline expires, submit to the appropriate committees of Congress a report that explains the reasons why a decision was not issued by the deadline.

(5) APPEAL.—A decision of the Merit Systems Protection Board under paragraph (3) may be appealed to the United States Court of Appeals for the Federal Circuit pursuant to section 7703 of title 5, United States Code, or to any court of appeals of competent jurisdiction pursuant to subsection (b)(1)(B) of that section.

(6) PROHIBITION AGAINST STAYS.—The Merit Systems Protection Board may not stay any removal or demotion under subsection (b), except as provided in section 1214(b) of title 5, United States Code.

(7) RESTRICTION ON PAY AND BENEFITS DURING APPEAL.—

(A) IN GENERAL.—

(i) RESTRICTION ON PAY AND BENEFITS.—During the period described in clause (ii), a covered individual may not receive any pay and benefits described in subparagraph (B).

(ii) PERIOD DESCRIBED.—The period referred to in clause (i) is the period—

(I) beginning on the date on which a covered individual appeals under this section a removal from the civil service under subsection (b)(2)(A); and

(II) ending on the later of—

(aa) the date on which the Merit Systems Protection Board issues a final decision on the appeal under paragraph (3); and

(bb) the date on which the United States Court of Appeals for the Federal Circuit issues a final decision on the appeal under paragraph (5).

(B) PAY AND BENEFITS DESCRIBED.—The pay and benefits referred to in subparagraph (A)(i) are any pay, awards, bonuses, incentives, allowances, differentials, student loan repayments, special payments, or benefits related to the employment of the individual by the Service.

(8) INFORMATION TO EXPEDITE APPEAL.—To the maximum extent practicable, the Secretary shall provide to the Merit Systems Protection Board such information and assistance as may be necessary to ensure an appeal under this subsection is expedited.

(9) BACKPAY.—If an employee prevails on appeal under this section, the employee shall be entitled to backpay (as provided in section 5596 of title 5, United States Code).

(10) APPLICABLE TIMELINES AND PROCEDURES.—If an employee who is subject to a collective bargaining agreement chooses to grieve an action taken under this section through a grievance procedure provided under the collective bargaining agreement, the timelines and procedures described in subsection (d) and this subsection shall apply.

(f) ALLEGED PROHIBITED PERSONNEL PRACTICE.—In the case of a covered individual seeking corrective action (or on behalf of whom corrective action is sought) from the Office of Special Counsel based on an alleged prohibited personnel practice described in section 2302(b) of title 5, United States Code, the Secretary may not remove, demote, or suspend the covered individual under subsection (b) without the approval of the Special Counsel under section 1214(f) of title 5, United States Code.

(g) TERMINATION OF INVESTIGATIONS BY OFFICE OF SPECIAL COUNSEL.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Special Counsel established by section 1211 of title 5, United States Code, may terminate an investigation of a prohibited personnel practice alleged by an employee or former employee of the Service after the Special Counsel provides to the employee or former employee a written statement of the reasons for the termination of the investigation.

(2) ADMISSIBILITY.—The statement described in paragraph (1) may not be admissible as evidence in any judicial or administrative proceeding without the consent of the employee or former employee described in paragraph (1).

(h) VACANCIES.—In the case of a covered individual who is removed or demoted under subsection (b), to the maximum extent practicable, the Secretary shall fill the vacancy arising as a result of the removal or demotion.

## **SEC. 608. EMPLOYEE PROTECTIONS AGAINST RETALIATION.**

(a) DEFINITIONS.—In this section:

(1) INFORMATION.—The term “information” means information—

(A) the disclosure of which is not specifically prohibited by law; and

(B) that is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(2) RETALIATION.—The term “retaliation”, with respect to a whistleblower, means—

(A) an adverse employment action against the whistleblower;

(B) a significantly adverse action against the whistleblower, such as the refusal or delay of care provided through the Service; and

(C) an adverse action described in subparagraph (A) or (B) against a family member or friend of the whistleblower.

(3) WHISTLEBLOWER.—The term “whistleblower” means an employee of the Service who discloses information that the employee reasonably believes evidences—

(A) a violation of any law, rule, regulation, or Service policy; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) EMPLOYEE ACCOUNTABILITY.—

(1) DESIGNATED OFFICIAL.—The Secretary shall designate an official in the Department who is not an employee of the Service to receive reports under paragraph (2).

(2) MANDATORY REPORTING.—An employee of the Service who witnesses retaliation against a whistleblower, a violation of a patient safety requirement, or other similar conduct shall submit to the official designated under paragraph (1) a report of the conduct.

(3) OVERSIGHT.—Not later than 3 days after the date on which the official designated under paragraph (1) receives a report under paragraph (2), the Secretary shall—

(A) formally review the report; and

(B) provide a copy of the report and any other relevant information to the Inspector General of the Department.

(4) REMOVAL FOR WHISTLEBLOWER RETALIATION.—

(A) IN GENERAL.—The Secretary may remove for misconduct from the civil service (as defined in section 2101 of title 5, United States Code), in accordance with section 606 or 607, as applicable, an employee of the Service if the Secretary determines, after completing a review described in paragraph (3), that the employee has retaliated against a whistleblower and warrants removal for misconduct.

(B) RETALIATION AS MISCONDUCT.—Retaliation by an employee against a whistleblower, as described in subparagraph (A), shall be considered to be misconduct for purposes of sections 606 and 607.

(5) ENHANCING PROTECTIONS FOR WHISTLEBLOWERS.—The Secretary shall carry out any actions determined necessary by the Secretary to enhance protection for whistleblowers, including identifying appropriate Service employees and requiring the

employees to complete the Office of Special Counsel's Whistleblower Certification Program.

## **SEC. 609. FISCAL ACCOUNTABILITY.**

### **(a) MANAGEMENT OF FUNDS.—**

(1) IN GENERAL.—If the Secretary fails to submit a professional housing plan under section 302(a) of the Restoring Accountability in the Indian Health Service Act of 2023 or a staffing plan under section 302(b) of that Act by the applicable deadline, the Secretary may not receive, obligate, transfer, or expend any amounts for a salary increase or bonus of an individual described in paragraph (2) until the professional housing plan or staffing plan, as applicable, is submitted.

(2) INDIVIDUAL DESCRIBED.—An individual referred to in paragraph (1) is an individual employed in the Service—

(A) in a position that is—

(i) described in any of sections 5312 through 5316 of title 5, United States Code;

(ii) placed in level IV or V of the Executive Schedule under section 5317 of title 5, United States Code; or

(iii) described in section 213.3301 or 213.3302 of title 5, Code of Federal Regulations (or a successor regulation); or

(B) as a limited term appointee, limited emergency appointee, or noncareer appointee (as those terms are defined in section 3132(a) of title 5, United States Code).

### **(b) PRIORITIZATION OF PATIENT CARE.—**

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall use amounts available to the Service that are not obligated or expended, including base budget funding and third party collections, during the fiscal year for which the amounts are made available, and that remain available, only to support patient care by using the funds for the costs of—

(A) essential medical equipment;

(B) purchased or referred care; or

(C) staffing.

(2) SPECIAL RULE.—In using amounts under paragraph (1), the Secretary shall ensure that, in any case where the amounts were originally made available for a particular Service unit, the amounts are used to benefit Indians served by that Service unit.

(3) HHS PLAN.—Each applicable fiscal year, the Secretary, in consultation with Indian tribes, shall establish a plan for distributing the amounts described in paragraph (1) across the categories of uses described in subparagraphs (A) through (C) of that paragraph.

(4) RESTRICTIONS.—The Secretary may not use amounts described in paragraph (1)—

(A) to remodel or interior decorate any Area office; or

(B) to increase the rate of pay for any employee of an Area office.

(c) SPENDING REPORTS.—Not later than 90 days after the end of each fiscal year, the Secretary shall submit a report describing the authorizations, expenditures, outlays, transfers, reprogramming, and obligations of each level of the Service, including the headquarters, each Area office, each Service unit, and each health clinic or facility, to—

(1) each Indian tribe;

(2) in the Senate—

(A) the Committee on Indian Affairs;

(B) the Committee on Health, Education, Labor, and Pensions;

(C) the Committee on Appropriations; and

(D) the Committee on the Budget; and

(3) in the House of Representatives—

(A) the Committee on Natural Resources;

(B) the Committee on Energy and Commerce;

(C) the Committee on Appropriations; and

(D) the Committee on the Budget.

(d) STATUS REPORTS.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 180 days after the end of each fiscal year, the Secretary shall provide to each entity described in paragraphs (1) through (3) of subsection (c) a report describing the safety, billing, certification, credential, and compliance statuses of each facility managed, operated, or otherwise supported by the Service.

(2) UPDATES.—With respect to any change of a status described in paragraph (1), the Secretary shall immediately provide to each entity described in paragraphs (1) through (3) of subsection (c) an update describing the change.

(e) EFFECT.—Nothing in this section—

(1) negatively impacts the right of an Indian tribe to enter into a compact or contract under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.); or

(2) applies to such a compact or contract unless expressly agreed to by the Indian tribe.

## **Section 2(c) of Public Law 96-135 (25 U.S.C. 5117(c))**

### **[(c) Waiver of applicability in personnel actions; scope, procedures, etc.]**

**[(1) Notwithstanding]**

**(c) WAIVER OF APPLICABILITY IN PERSONNEL ACTIONS.—**

(1) IN GENERAL.—Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action respecting an applicant or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action.

**[(2) The provisions]** (2) APPLICATION TO CERTAIN INDIVIDUALS.—The provisions of section 8336(j) of title 5 shall not apply to any individual who has accepted a waiver with respect to a personnel action pursuant to paragraph (1) or (3) of this subsection or to **[section 2011(f) <sup>1</sup> of this title]** section 1132(f) of the Education Amendments of 1978 (25 U.S.C. 2012(f)).

**(3) IHS WAIVERS.—**

(A) IN GENERAL.—At the request of a concerned Indian tribe, the Secretary of Health and Human Services may seek from each Indian tribe concerned a waiver of Indian preference laws for a personnel action that is with respect to—

(i) a Service unit (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) in which—

(I) 15 percent or greater of the total positions are not filled by a full-time employee of the Indian Health Service for a period of 6 months or longer; or

(II) 15 percent or greater of a specific health professional position are not filled by a full-time employee of the Indian Health Service for a period of 6 months or longer; or

(ii) a former employee of the Indian Health Service, or a former Tribal employee, who was removed from the employment during, or demoted for performance or misconduct that occurred during, the 5-year period following the date of the personnel action.

(B) LIMITATION.—A waiver may only be requested under subparagraph (A) for a personnel action that is with respect to an employee described in clause (ii) of that subparagraph if the reason for the removal or demotion of the employee did not result from an action undertaken by the employee that was reported to the National Practitioner Data Bank.

(C) RESTRICTION.—The Secretary of Health and Human Services may only approve a waiver under subparagraph (A) if the waiver is first requested by a concerned Indian tribe.

### **Section 4303(f) of title 5, United States Code**

(f) This section does not apply to-

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under [section 3321\(a\)\(2\) of this title](#),

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less,

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions, [\[or\]](#)

(4) any removal or demotion under [section 714 of title 38](#), or

(5) any removal or demotion under section 607 of the Indian Health Care Improvement Act.

### **Section 113 of the Indian Health Care Improvement Act (25 U.S.C. 1616f)**

## **§1616f. Tribal culture and history**

### **(a) Program established**

The Secretary, acting through the Service, shall establish [\[a program\]](#) an annual mandatory training program under which [\[appropriate employees of the Service\]](#) employees of the Service, locum tenens medical providers, healthcare volunteers, and other contracted employees who work at Service hospitals or other Service units and whose employment requires regular direct patient access who serve particular Indian tribes shall receive educational instruction in the history and culture of such tribes and in the history of the Service.

### **(b) Tribally controlled institutions**

To the extent feasible, the program established under subsection (a) shall-

(1) be carried out through tribally controlled colleges or universities (within the meaning of section 1801(a)(4) of this title) and tribally controlled postsecondary vocational institutions (as defined in section 2397h(2) <sup>1</sup> of title 20),

(2) be developed in consultation with the affected tribal government, and

(3) include instruction in Native American studies.

(c) REQUIREMENT TO COMPLETE TRAINING PROGRAM.—Notwithstanding any other provision of law, beginning on the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, each employee or provider described in subsection (a) who enters into a contract with the Service shall, as a condition of employment, annually participate in and complete the program established under subsection (a).

## **Title VIII of the Indian Health Care Improvement Act (25 U.S.C. 1671 et seq.)**

\*\*\*

### **SEC. 803. FITNESS OF HEALTH CARE PROVIDERS.**

(a) ADDITIONAL REQUIREMENTS FOR HIRING OF HEALTH CARE PROVIDERS BY SERVICE.—As part of the hiring process for each health care provider position at the Service after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, the Director shall require from the medical board of each State in which the health care provider has or had a medical license—

(1) information on any violation of the requirements of the medical license of the health care provider during the 20-year period ending on the date on which the health care provider is being considered for a position at the Service; and

(2) information on whether the health care provider has entered into any settlement agreement for a disciplinary charge relating to the practice of medicine by the health care provider.

(b) PROVISION OF INFORMATION ON SERVICE HEALTH CARE PROVIDERS TO STATE MEDICAL BOARDS.—Notwithstanding section 552a of title 5, United States Code, with respect to each health care provider of the Service who has violated a requirement of the medical license of the health care provider, the Director shall provide to the medical board of each State in which the health care provider is licensed detailed information with respect to the violation, regardless of whether the medical board has formally requested that information.

\*\*\*

### **SEC. 833. STAFFING DEMONSTRATION PROGRAM.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, the Secretary, acting through the Service (referred to in this section as the “Secretary”), shall establish a demonstration program (referred to in this section as the “demonstration program”) under which the Service may provide Service units with additional staffing resources, with the goal that the resources become self-sustaining.

(b) SELECTION.—In selecting Service units for participation in the demonstration program, the Secretary shall consider whether a Service unit services an Indian tribe that—

(1) has utilized or contributed substantial Tribal funds to construct a health facility used by the Service or identified in the master plan for the Service unit;



(2) is located in 1 or more States with Medicaid reimbursements plans or policies that will increase the likelihood that the staffing resources provided will be self-sustaining; and

(3) is operating a health facility described in paragraph (1) under historical staffing ratios, as determined by the Secretary, that have not been equalized or updated by the Service or any other Service program to reflect current staffing needs.

(c) DURATION.—Staffing resources provided to a Service unit under the demonstration program shall be provided for a duration that the Secretary, in consultation with the applicable Indian tribe, determines appropriate, on the condition that each staffing position provided shall be for a period of not less than 3 fiscal years.

(d) EFFECT OF STAFFING AWARDS.—No staffing resources provided under the demonstration program shall reduce the recurring base funding for staffing for any Indian tribe or Service unit.

(e) SUNSET.—The demonstration program established under subsection (a) shall terminate on the date that is 4 years after the date on which the demonstration program is established.

(f) REPORT.—Not later than 1 year after the date on which the demonstration program terminates under subsection (e), the Secretary shall submit to the Committee on Indian Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Natural Resources and the Committee on Energy and Commerce of the House of Representatives a report describing the demonstration program, including information on—

(1) whether the staffing resources provided under the demonstration program resulted in additional revenue for the applicable Service unit sufficient to maintain the staff on a permanent basis;

(2) the levels to which the staffing resources provided under the demonstration program reduced the unmet staffing need for the applicable Service unit; and

(3) whether the demonstration program could be deployed permanently to reduce unmet staffing needs throughout the Service.

#### **SEC. 834. RULE ESTABLISHING TRIBAL CONSULTATION POLICY.**

(a) IN GENERAL.—Not later than December 31, 2023, the Secretary shall establish, and once every 5 years thereafter, the Secretary shall update, after meaningful consultation with representatives of affected Indian tribes, a rule establishing a Tribal consultation policy for the Service.

(b) CONTENTS OF TRIBAL CONSULTATION POLICY.—The policy established under the rule under subsection (a) shall—

(1) update, and replace, the Tribal consultation policy established under Circular No. 2006-01 of the Service (or any successor policy); and

(2) include—

(A) a process for determining when and how the Service will notify Indian tribes of the availability of meaningful consultation;

(B) a determination of which actions or agency decisions by the Service will trigger a requirement for meaningful consultation with Indian tribes; and

(C) a determination of which actions constitute meaningful consultation with Indian tribes.

## **SEC. 835. NOTIFICATION OF INVESTIGATION REGARDING PROFESSIONAL CONDUCT; SUBMISSION OF RECORDS.**

(a) REPORT.—Not later than 14 calendar days after the date on which the Service undertakes an investigation into the professional conduct of a licensee of a State, the Secretary, acting through the Service, shall notify the relevant State medical board of the investigation.

(b) SUBMISSION OF RECORDS.—Not later than 14 calendar days after the date on which the Service generates records relating to an investigation conducted by the Service into the professional conduct of a licensee of a State, the Secretary, acting through the Service, shall provide the records to the relevant State medical board.

## **Title IV of the Indian Health Care Improvement Act (25 U.S.C. 1641 et seq.)**

\*\*\*

## **SEC. 412. STANDARDS TO IMPROVE THE TIMELINESS OF CARE.**

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, the Secretary, acting through the Service, shall—

(A) establish, by regulation, standards to measure the timeliness of the provision of health care services in Service facilities; and

(B) provide such standards to each Service unit.

(2) DATA COLLECTION.—The Secretary, acting through the Service, shall develop a process for each Service unit to submit to the Secretary data with respect to the standards established under paragraph (1)(A).

(b) ANNUAL REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Restoring Accountability in the Indian Health Service Act of 2023, an annually thereafter, each Area office shall submit to the Secretary a report on the metrics reported by Service units relating to the timeliness of the provision of health care services in Service facilities within each Service unit.

(2) PUBLICATION.—The Secretary shall make each report received under paragraph (1) publicly available on the website of the Service.

## **Section 7211 of title 5, United States Code**

### **§7211. Employees' right to petition Congress**

[The right of] (a) IN GENERAL.—The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

(b) ADVERSE ACTION.—An employee who interferes with or denies a right protected under subsection (a) shall be subject to any adverse action described in paragraph (1) through (5) of

section 7512, in accordance with the procedure described in section 7513 and any other applicable procedure.

## **Section 1880 of the Social Security Act (42 U.S.C. 1395qq)**

### **§1395qq. Indian Health Service facilities**

#### **(a) Eligibility for payments; conditions and requirements**

A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in [section 1603 of title 25](#)), shall be eligible for payments under this subchapter, notwithstanding [sections 1395f\(c\) and 1395n\(d\) of this title](#), if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this subchapter.

#### **(b) Eligibility based on submission of plan to achieve compliance with conditions and requirements; twelve-month period**

Notwithstanding subsection (a), a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this subchapter which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

#### **(c) Payments into special fund for improvements to achieve compliance with conditions and requirements; certification of compliance by Secretary**

Notwithstanding any other provision of this subchapter, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this subchapter. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

#### **(d) Report by Secretary; status of facilities in complying with conditions and requirements**

The annual report of the Secretary which is required by [section 1671 of title 25](#) shall include (along with the matters specified in [section 1643 of title 25](#)) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this subchapter and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) and otherwise) toward the achievement of such compliance.

#### **(e) Services provided by Indian Health Service, Indian tribe, or tribal organization**

(1)(A) Notwithstanding [section 1395n\(d\) of this title](#), subject to subparagraph (B), the Secretary shall make payment under part B to a hospital or an ambulatory care clinic (whether provider-based or freestanding) that is operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined for purposes of subsection (a)) for services described in

paragraph (2) (and for items and services furnished on or after January 1, 2005, all items and services for which payment may be made under part B) furnished in or at the direction of the hospital or clinic under the same situations, terms, and conditions as would apply if the services were furnished in or at the direction of such a hospital or clinic that was not operated by such Service, tribe, or organization.

(B) Payment shall not be made for services under subparagraph (A) to the extent that payment is otherwise made for such services under this subchapter.

(2) The services described in this paragraph are the following:

(A) Services for which payment is made under [section 1395w-4 of this title](#).

(B) Services furnished by a practitioner described in [section 1395u\(b\)\(18\)\(C\) of this title](#) for which payment under part B is made under a fee schedule.

(C) Services furnished by a physical therapist or occupational therapist as described in [section 1395x\(p\) of this title](#) for which payment under part B is made under a fee schedule.

(3) Subsection (c) shall not apply to payments made under this subsection.

**(f) Cross reference**

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see [section 1645 of title 25](#).<sup>1</sup>

(g)(1) Not less frequently than once every 2 years, the Administrator of the Centers for Medicare & Medicaid Services shall conduct surveys of participating Indian Health Service facilities to assess the compliance of each hospital or skilled nursing facility of the Indian Health Service with—

(A) [section 1867](#); and

(B) conditions of participation in the program under this title.

(2) Each survey completed under this subsection shall be posted on the Internet website of the Centers for Medicare & Medicaid Services. Such posting shall comply with the Federal regulations concerning the privacy of individually identifiable health information promulgated under [section 264\(c\) of the Health Insurance Portability and Accountability Act of 1996](#).

**Section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)**

**§1603. Definitions**

In this chapter:

**(1) Area office**

The term "Area office" means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

**(2) Behavioral health**

**(A) In general**

The term "behavioral health" means the blending of substance (alcohol, drugs, inhalants, and tobacco) abuse and mental health disorders prevention and treatment for the purpose of providing comprehensive services.

**(B) Inclusions**

The term "behavioral health" includes the joint development of substance abuse and mental health treatment planning and coordinated case management using a multidisciplinary approach.

**(3) California Indian**

The term "California Indian" means any Indian who is eligible for health services provided by the Service pursuant to [section 1679 of this title](#).

**(4) Community college**

The term "community college" means-

- (A) a tribal college or university; or
- (B) a junior or community college.

**[(6)] (5) Department**

The term "Department", unless otherwise designated, means the Department of Health and Human Services.

**[(7)] (6) Disease prevention**

**(A) In general**

The term "disease prevention" means any activity for-

- (i) the reduction, limitation, and prevention of-
  - (I) disease; and
  - (II) complications of disease; and

- (ii) the reduction of consequences of disease.

**(B) Inclusions**

The term "disease prevention" includes an activity for-

- (i) controlling-
  - (I) the development of diabetes;
  - (II) high blood pressure;
  - (III) infectious agents;
  - (IV) injuries;
  - (V) occupational hazards and disabilities;
  - (VI) sexually transmittable diseases; or
  - (VII) toxic agents; or

- (ii) providing-
    - (I) fluoridation of water; or
    - (II) immunizations.

**[(8)] (7) FAE**

The term "FAE" means fetal alcohol effect.

**[(9)] (8) FAS**

The term "fetal alcohol syndrome" or "FAS" means a syndrome in which, with a history of maternal alcohol consumption during pregnancy, the following criteria are met:

- (A) Central nervous system involvement such as mental retardation, developmental delay, intellectual deficit, microencephaly, or neurologic abnormalities.
- (B) Craniofacial abnormalities with at least 2 of the following: microphthalmia, short palpebral fissures, poorly developed philtrum, thin upper lip, flat nasal bridge, and short upturned nose.
- (C) Prenatal or postnatal growth delay.

**[(10)] (9) Health profession**

The term "Health profession" means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

**[(11)] (10) Health promotion**

The term "health promotion" means any activity for-

- (A) fostering social, economic, environmental, and personal factors conducive to health, including raising public awareness regarding health matters and enabling individuals to cope with health problems by increasing knowledge and providing valid information;
- (B) encouraging adequate and appropriate diet, exercise, and sleep;
- (C) promoting education and work in accordance with physical and mental capacity;
- (D) making available safe water and sanitary facilities;
- (E) improving the physical, economic, cultural, psychological, and social environment;
- (F) promoting culturally competent care; and
- (G) providing adequate and appropriate programs, including programs for-
  - (i) abuse prevention (mental and physical);
  - (ii) community health;
  - (iii) community safety;
  - (iv) consumer health education;
  - (v) diet and nutrition;
  - (vi) immunization and other methods of prevention of communicable diseases, including HIV/AIDS;
  - (vii) environmental health;
  - (viii) exercise and physical fitness;
  - (ix) avoidance of fetal alcohol spectrum disorders;
  - (x) first aid and CPR education;
  - (xi) human growth and development;
  - (xii) injury prevention and personal safety;
  - (xiii) behavioral health;
  - (xiv) monitoring of disease indicators between health care provider visits through appropriate means, including Internet-based health care management systems;
  - (xv) personal health and wellness practices;
  - (xvi) personal capacity building;
  - (xvii) prenatal, pregnancy, and infant care;
  - (xviii) psychological well-being;
  - (xix) reproductive health and family planning;
  - (xx) safe and adequate water;
  - (xxi) healthy work environments;

(xxii) elimination, reduction, and prevention of contaminants that create unhealthy household conditions (including mold and other allergens);  
(xxiii) stress control;  
(xxiv) substance abuse;  
(xxv) sanitary facilities;  
(xxvi) sudden infant death syndrome prevention;  
(xxvii) tobacco use cessation and reduction;  
(xxviii) violence prevention; and  
(xxix) such other activities identified by the Service, a tribal health program, or an urban Indian organization to promote achievement of any of the objectives referred to in [section 1602\(2\) of this title](#).

**[(12)] (11) Indian health program**

The term "Indian health program" means-

- (A) any health program administered directly by the Service;
- (B) any tribal health program; and
- (C) any Indian tribe or tribal organization to which the Secretary provides funding pursuant to [section 47 of this title](#).

**[(13)] (12) Indians or Indian**

The term "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof,<sup>1</sup> except that, for the purpose of [sections 1612 and 1613 of this title](#), such terms shall mean any individual who <sup>2</sup>

- (A),<sup>3</sup> irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or
- (B) is an Eskimo or Aleut or other Alaska Native, or
- (C) is considered by the Secretary of the Interior to be an Indian for any purpose, or
- (D) is determined to be an Indian under regulations promulgated by the Secretary.

**[(14)] (13) Indian tribe**

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [[43 U.S.C. 1601 et seq.](#)], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**[(15)] (14) Junior or community college**

The term "junior or community college" has the meaning given the term in section 1058(e) <sup>1</sup> of title 20.

**[(5) Contract health service**

**The term "contract health service" means** **(15) PURCHASED/REFERRED CARE.—The term "purchased/referred care" means** any health service that is-

- (A) delivered based on a referral by, or at the expense of, an Indian health program; and
- (B) provided by a public or private medical provider or hospital that is not a provider or hospital of the Indian health program.

**(16) Reservation**

**(A) In general**

The term "reservation" means a reservation, Pueblo, or colony of any Indian tribe.



**(B) Inclusions**

The term "reservation" includes-

- (i) former reservations in Oklahoma;
- (ii) Indian allotments; and
- (iii) Alaska Native Regions established pursuant to the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#)).

**(17) Secretary**

The term "Secretary", unless otherwise designated, means the Secretary of Health and Human Services.

**(18) Service**

The term "Service" means the Indian Health Service.

**(19) Service area**

The term "Service area" means the geographical area served by each area office.

**(20) Service unit**

The term "Service unit" means an administrative entity of the Service or a tribal health program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

**(21) Substance abuse**

The term "Substance abuse" includes inhalant abuse.

**(22) Telehealth**

The term "telehealth" has the meaning given the term in [section 254c–16\(a\) of title 42](#).

**(23) Telemedicine**

The term "telemedicine" means a telecommunications link to an end user through the use of eligible equipment that electronically links health professionals or patients and health professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services.

**(24) Tribal college or university**

The term "tribal college or university" has the meaning given the term in [section 1059c\(b\) of title 20](#).

**(25) Tribal health program**

The term "tribal health program" means an Indian tribe or tribal organization that operates any health program, service, function, activity, or facility funded, in whole or part, by the Service through, or provided for in, a contract or compact with the Service under the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450 et seq.](#)).<sup>1</sup>

**(26) Tribal organization**

The term "tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act ([25 U.S.C. 450b](#)).<sup>1</sup>

**(27) Urban center**

The term "Urban center" means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under subchapter IV, as determined by the Secretary.

**(28) Urban Indian**

The term "Urban Indian" means any individual who resides in an urban center, as defined in subsection (g) hereof,<sup>1</sup> and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.<sup>1</sup>

**(29) Urban Indian organization**

The term "Urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in [section 1653\(a\) of this title](#).